Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

1993 Annual Access Tariff Filings Phase I	)	
1994 Annual Access Tariff Filings	)	
AT&T Communications Tariff F.C.C. Nos. 1 and 2, Transmittal Nos. 5460, 5461, 5462, and 5464 Phase III	)	CC Docket Nos. 93-193, 94-65, 93-193, 94-157
Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690	)	
NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 328	)	

REPLY COMMENTS OF AT&T CORP.

David L. Lawson
James P. Young
Joy M. Leong
Christopher T. Shenk
Sidley Austin Brown & Wood L.L.P.
1501 K St. N.W.
Washington, D.C. 20005
(202) 736-8000

Mark C. Rosenblum
Lawrence J. Lafaro
Judy Sello
AT&T Corp.
Room 3A229
One AT&T Way
Bedminster, NJ 07921
(908) 532-1846

Attorneys for AT&T Corp.

April 22, 2003

TABLE OF CONTENTS

Page

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

1993 Annual Access Tariff Filings Phase I	)	
1994 Annual Access Tariff Filings	)	
AT&T Communications Tariff F.C.C. Nos. 1 and 2, Transmittal Nos. 5460, 5461, 5462, and 5464 Phase III	)	CC Docket Nos. 93-193, 94-65, 93-193, 94-157
Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690	)	
NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 328	)	

REPLY COMMENTS OF AT&T CORP.

Pursuant to the Commission's *Notice*,[1] AT&T Corp. ("AT&T") submits these reply comments opposing certain local exchange carriers' ("LECs") unlawful use of accounting rule changes that have no economic impact as the basis for exogenous cost increases in their 1996-97 price cap indices ("PCIs").

[1] Order, Notice, and Erratum, *1993 Annual Access Tariff Filings Phase I; 1994 Annual Access Tariff Filings; AT&T Communications Tariff F.C.C. Nos. 1 and 2, Transmittal Nos. 5460, 5461, 5462, and 5464 Phase III; Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690; NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 328,* CC Docket Nos. 93-193, 94-65, 93-193, 94-157, DA 03-488 (rel. Feb. 25, 2003) ("*Notice*").

The comments strongly confirm that the LECs' attempted rate increases are unlawful. Indeed, Verizon and SBC are the only two LECs that filed comments, and neither LEC makes any attempt to justify its massive rate increases on the merits. As the Commission has repeatedly recognized, the accounting changes at issue had no economic impact on the LECs' operations or cash flow, and therefore upward exogenous adjustments to recover such "costs" would represent an inappropriate and unlawful windfall.

Rather, the LECs' arguments remain purely procedural. The LECs claim that the Commission is caught in its own rules and powerless to reach the indisputably correct result. As AT&T explained at length in its opening comments, however, the Commission has ample authority to reject the LECs' proposed rate increases. This tariff investigation can function as a rulemaking, and therefore the Commission can establish in this proceeding that unfunded OPEB costs must, like other zero cost sources of capital, be deducted from the rate base. In any event, the Commission rules in effect at the time of these tariff filings (and today) independently bar *any* exogenous cost adjustments – such as those proposed here – designed to recover "costs" resulting from accounting changes that have no economic impact on the LECs' operations. The LECs do not refute (or even address) any of these realities.

Verizon and SBC also use their comments to attempt to shore up Verizon's baseless petition for reconsideration of the *Erratum* that reinstated one OPEB-related docket that all agree was erroneously included in a ministerial list of proceedings that had been finally resolved by Commission order. The LECs' new arguments are meritless.

Finally, even if the LECs were entitled to make these exogenous adjustments, their assumptions and methods for calculating the adjustments were flawed and produced overstated rate increases. As shown below, SBC's brief attempts to rehabilitate its calculations are meritless.

I. THE COMMISSION HAS AMPLE AUTHORITY TO REJECT THE LECS' UNJUSTIFIED RATE INCREASES.

Verizon's comments are devoted almost entirely to establishing that the pre-1997 Part 65 rules did not permit the deduction of OPEBs from the rate base, and that those rules could be amended only in another rulemaking. *See* Verizon at 6-10. As AT&T has explained at length, however, even if that is true, this tariff investigation can and should function as that rulemaking proceeding. *See* AT&T at 17-24. It is well settled that "a tariff investigation is a rulemaking of particular applicability under the [Administrative Procedure Act (APA)],"[2] and that "[t]he Commission routinely makes significant policy and methodological decisions based on the records developed in tariff investigations and such decisions do not violate the notice and comment requirements of the [APA]."[3] Thus, while the Commission has noted that it cannot "amend Part 65 through an interpretation without providing the affected parties . . . notice of or chance to comment on the amendment," this tariff proceeding provides all "affected parties" precisely that "notice of and chance to comment" required under the APA to establish a policy for rate base treatment of OPEBs for the tariffs at issue.

---

[2] *See, e.g.,* Memorandum Opinion and Order, *Tariffs Implementing Access Charge Reform*, 13 FCC Rcd. 14683, ¶ 81 (1998) (quotation omitted); Memorandum Opinion and Order, *Implementation of Special Access Tariffs of Local Exchange Carriers*, 5 FCC Rcd. 4861 (1990); 5 U.S.C. § 551(4).

[3] *Access Reform Tariff Order* ¶ 81.

Contrary to Verizon's claims, the D.C. Circuit's decision in *Southwestern Bell Tel. Cos.* v. *FCC*, 28 F.3d 165 (D.C. Cir. 1994), provides no support for its position. Although the Court's opinion includes the unremarkable statement that the Commission was bound by its rules on exogenous cost adjustments "until such time as it altered them through another rulemaking" (*id.* at 169), the Commission did not assert its rulemaking authority in that tariff investigation, but rather found only that its existing rules could be interpreted to preclude the exogenous adjustment at issue. The Court held merely that the existing rules did not permit the Commission's interpretation. *Id*. at 169-73. The D.C. Circuit's decision does not preclude the Commission from engaging in rulemaking in these tariff proceedings to establish the appropriate rate base treatment of OPEB costs in this tariff investigation.

Even if the Commission did not have rulemaking authority here, Commission *rules* that were in place at the time of these tariff filings independently prohibit the sort of exogenous adjustment Verizon seeks here. As Verizon itself explains (at 10), in 1995, prior to the tariff filings at issue, the Commission "adopted a *rule change* to deny exogenous treatment to changes in accounting rules that change the timing of when costs are recognized but that do not have an actual economic impact" (emphasis added). As the Commission has repeatedly made clear, SFAS-106 was just such an accounting change.[4] Accordingly, regardless of the Part 65 rules, the Commission's exogenous adjustment rules prohibit exogenous adjustments that, like Verizon's here, seek to recover "costs" that result purely from paper accounting changes that have no real-world effect on the LEC's cash flow.

---

[4] *See, e.g.,* First Report and Order, *Price Cap Performance Review for Local Exchange Carriers*, 10 FCC Rcd. 8961, ¶ 307 (1995) ("most if not all of the ongoing cost changes resulting from the adoption of SFAS-106 will not be eligible for exogenous cost treatment under our revised rule on a prospective basis").

SBC is the only other LEC to file comments, and its additional arguments are frivolous. In particular, SBC's claim (at 9) that Rule 65.600(d) would permit the exogenous adjustments it seeks is incorrect. Assuming that the general rule governing sharing (47 C.F.R. § 61.45(d)) even applied here – and as AT&T explained (at 26-27), it does not – Rule 65.600(d) by its plain terms would bar restatement of the 1993 and 1994 rate bases. SBC argues that "[s]haring is calculated based on actual earnings," but a LEC's "actual earnings" are determined from the LEC's Form 492, which cannot be amended more than 15 months after the period at issue.[5] Nor is the *1990 Price Cap Order* of any help to SBC, because the language it cites refers only to the annual sharing adjustment limited to the *base* period.[6] Indeed, SBC's entire argument on this point is focused not on the rate base, but on an amorphous asserted right to adjust its "sharing calculations" and "sharing amounts" without any statute of limitations. This simply confirms that what SBC is really asking for is a special exogenous adjustment outside of the general sharing rule, which is barred both (1) because SBC has not sought the Commission's permission through "rulemaking, rule waiver, or declaratory ruling"[7] and (2) because the adjustment implements accounting changes that have no economic impact. *See* AT&T at 25-31.[8]

---

[5] *See* 47 C.F.R. § 65.600(d)(2); *see also Support Material to be Filed with 1996 Annual Access Tariffs*, Tariff Review Plans, DA 96-263, ¶ 25 (rel. February 29, 1996) ("Companies are required to base this year's sharing or low-end adjustment on their earnings *in calendar year 1995*" (emphasis added)).

[6] *Policy and Rules Concerning Rates for Local Exchange Carriers*, Second Report and Order, 5 FCC Rcd. 6786 ¶ 288 (1990) (cited in SBC at 9).

[7] *1995 Price Cap Performance Order* ¶ 318.

[8] SBC also argues (at 8) that the Commission could not decide the proper rate treatment of OPEB costs on a case-by-case basis in a tariff investigation, because that would amount to the Bureau's "determining whether OPEB exclusions are permitted" in violation of the *RAO Rescission Order*. SBC is confused. Section 204 expressly requires orders in tariff investigations to be issued by the full Commission, not the Bureau; the Bureau was merely stating – correctly – that the Commission itself would have authority to determine the appropriate rate base treatment of

II. THE COMMISSION HAD AMPLE AUTHORITY TO CORRECT THE MINISTERIAL ERROR IN THE TERMINATION ORDER.

Verizon and SBC also rehash arguments that Verizon made in its petition for reconsideration of the Commission's decision to refresh the record in these proceedings. As AT&T has shown in its opposition to that petition, Verizon's arguments are meritless.

The LECs cannot dispute that the Commission has broad authority to correct inadvertent errors such as the one at issue here: "[i]t is axiomatic" that agencies "have the power and duty to correct judgments which contain clerical errors or judgments which have issued due to inadvertence or mistake." *See American Trucking Ass'ns* v. *Frisco Transp. Co.*, 358 U.S. 133, 145 (1958). Instead, the LECs continue to insist that the Commission's error correction authority is limited to the authority granted to federal district courts under Federal Rule of Civil Procedure 60(a). Verizon Reply at 6-9; SBC Reply at 3-7. Although they concede that Rule 60 does not bind the Commission, *see* Verizon Reply at 7, the LECs insist, without citation to any authority, that the Commission's power cannot "logically be expanded beyond the reach of Rule 60(a)." *Id*. In the LECs' view, the voluminous caselaw of Rule 60(a) defines with specificity the scope of the Commission's error correction authority, and thus much of the LECs' replies are devoted to a lengthy analysis of whether the error at issue qualifies as a "clerical error" under Rule 60(a) or an "inadvertent error" under Rule 60(b). It bears repeating, however, that Rule 60 *does not apply* to the Commission. The Rule 60 caselaw, with its extensive hairsplitting over types of inadvertent errors, may be instructive but it is not remotely dispositive. Rule 60 is an extremely

---

OPEB costs on a case-by-case basis in a tariff investigation.

specific provision crafted for use in the federal courts, and the boundaries of Rule 60(a) do not coincide with any statutory limitations on the Commission's error correction authority such that the Rule 60(a) caselaw would provide a precise guide to the scope of the Commission's powers. Indeed, the Supreme Court in *Frisco* made clear that agencies have the "power and duty" to correct judgments which contain "clerical errors *or* judgments which have issued due to inadvertence or mistake." 358 U.S. at 145 (emphasis added).

Even if Rule 60(a) did chart the boundaries of the Commission's authority, the error here was clearly a ministerial, clerical error. The Commission's instructions were clear from the face of the *Termination Order* – the Commission had made a considered, substantive decision that the only proceedings to be terminated were those in which there were no "outstanding issues," in which the matter had been "resolved by the issuance of final orders that were not subject to judicial review, or if subject to judicial review, were affirmed and the court's mandate was issued," and in which "no further action by the Commission is required." *Termination Order* ¶ 1. Moreover, these instructions were not subject to interpretation or susceptible to judgment calls – *i.e.*, the identification of such proceedings was a ministerial task. Accordingly, the erroneous inclusion of these proceedings in the list accompanying the *Termination Order* was a ministerial error. The error here was akin to the error in *Frisco*; the Commission had made a substantive decision that was spelled out in its order, and the accompanying list implementing that decision contained an inadvertent error clearly at odds with the substantive judgment expressed in the order. In no sense did the Commission delegate to the staff the authority to exercise its "judgment or discretion" to select proceedings for termination.

Moreover, correcting the error at issue here would not put the Commission on a slippery slope, as SBC contends. Even if the Commission's orders are generally characterized by factual and legal mistakes, as SBC believes, the Commission's substantive decisions in *this* order were both clear from the face of the order and correct: *i.e.*, the only proceedings that the Commission had decided to terminate were those in which there were no outstanding issues. The *Erratum* thus does not represent a change in policy or a rethinking of any substantive judgment; it corrects what is obviously a ministerial error in the implementation of the Commission's clearly expressed substantive decision. Accordingly, the *Erratum* does not establish a precedent for unfettered reconsideration of substantive judgments or mistakes.

Verizon reads far too much into *Albertson* v. *FCC*, 182 F.2d 397, 399 (D.C. Cir. 1950). *See* Verizon at 2-3. In *Albertson*, a party filed a petition for rehearing of a licensing determination, and after that petition was denied, it filed another pleading styled a "petition to reconsider." The petition did not assert that the Commission had made an inadvertent error, but that the decision was substantively incorrect. The court found that the Commission had broad inherent powers to reconsider its own actions, because "the power to reconsider is inherent in the power to decide." Based on this inherent power, the court's only holdings were (1) that the agency had authority to entertain the petition (even though such petitions were nowhere mentioned in either the Act or the rules) and (2) that the petition tolled the time for appeal. *See Albertson*, 182 F.2d at 399-400.

The court did *not* hold that agencies may reconsider their decisions *only* within the time frame for judicial review. Indeed, the court had no occasion to address the ultimate boundaries of the agency's inherent statutory power to reconsider even substantive decisions; it certainly did

not consider the scope of the Commission's even broader error correction authority, which was not at issue in *Albertson*. And *American Methyl Corp.* v. *EPA*, 749 F.2d 826 (D.C. Cir. 1984), Verizon's other principal authority, made clear that the court neither considered nor took a position on "what further inherent or implicit authority might exist," because in that case Congress had provided an express error correction mechanism for the Environmental Protection Agency. Thus, to the extent that an "*Albertson* rule" is relevant at all, that decision affirms that the Commission has broad "implied powers arising out of the Act" to correct even substantive errors. *Albertson*, 182 F.2d at 400.

In all events, the *AT&T* case, unlike *Albertson*, is directly on point because the D.C. Circuit there permitted the Commission to correct precisely the type of error at issue, in the same order (the *Termination Order*), both (1) after the statutory time period for reconsideration had passed *and* (2) after the Commission had lost jurisdiction over the order due to the filing of a petition for review in the court of appeals. *Cf.* Verizon Reply at 2-3 (asserting that time for judicial review dispositive because agency "retains jurisdiction" until time expires). As AT&T has explained, the court could only have permitted such an amendment if it had accepted the argument that the Commission had ample authority to reinstate an inadvertently terminated docket at any time. The *AT&T* decision establishes the only relevance of the judicial review period in this context – the filing of a petition for review may divest the agency of jurisdiction and require the agency to seek the court's permission before engaging in error correction while the court retains jurisdiction over the matter. But there is no pending judicial action here and the Hobbs Act therefore does not even come into play. Rather, Verizon is left only with its

argument that the Commission cannot engage in error correction outside the 30 day reconsideration period, and the *AT&T* court plainly rejected that argument.

The LECs have no answer at all to AT&T's showing that the *Termination Order* does not even purport to be an "order concluding the hearing" under Section 204(a). 47 U.S.C. § 204(a). The express language of the *Termination Order* makes clear that the Commission did not intend for its decision to be interpreted as substantive action in any of the listed dockets. As a result, the LECs' interpretation of the *Termination Order* as a substantive decision revoking the suspension and accounting orders and "concluding the hearing" cannot be squared with the language of the order itself. Verizon (at 5-6) quotes the ordering clause out of context – which establishes at most that a ministerial error occurred – but Verizon ignores the fact that the ordering clause does not cite Section 204 as authority for the actions taken, and thus cannot be interpreted as an "order concluding the hearing" within the meaning of that section.

In all events, the Commission has continued to use all of the docket numbers somewhat interchangeably ever since Dockets 93-193, 94-65, and 94-157 were consolidated into a single investigation. In the *Termination Order* the Commission inadvertently listed only Docket 94-157 and not the others, and therefore the investigation cannot be considered definitively terminated. Verizon asserts that the Commission held in 1997 that the outstanding issues in this proceeding would be "addressed in the consolidated investigation in CC Docket No. 94-157," but the cited order actually lists all of the dockets. *See 1993 Annual Tariff Filings, et al.*, CC Docket No. 93-193 *et al.,* Memorandum Opinion and Order, 12 FCC Rcd. 6277 at ¶ 2 n.6 (cited in Verizon Reply at 10). All of this simply confirms that listing only Docket 94-157 is not sufficient to terminate the proceeding.

The LECs' remaining claims are frivolous. SBC argues (at 4-6) that Section 204(a)(2)(A) requires the Commission to issue an order concluding a tariff investigation within five months after the rates become effective, and since that five months has elapsed here, the Commission has no authority to continue the investigation. In effect, under SBC's reading of the statute, the Commission's failure to act within five months operates as a revocation of the suspension and accounting orders and as a decision in SBC's favor. Neither the Commission nor the courts have ever endorsed such a view.[9] Indeed, courts have routinely treated Commission failure to act under Section 204 not as grounds for dismissing the claim, but as grounds for a writ of mandamus to the Commission or other relief to complete the investigation on the merits.[10] SBC's reading would turn the statute on its head, because Section 204(a)(2)(A) was enacted for the benefit of *petitioners*, so that their claims would not sit pending for months or years due to Commission inaction. SBC's reading of the statute, by contrast, would unfairly and perversely penalize petitioners, and reward carriers charging unlawful rates, all because of the *Commission's* failure to act.

Verizon's claim (at 12) that damages would be somehow inconsistent with later access charge regulation – in particular, the *CALLS Order* – is also meritless. The fact that IXCs agreed

---

[9] SBC cites only one case, *Illinois Bell Tel. Co.* v. *FCC*, 966 F.2d 1478 (D.C. Cir. 1992), but the court there held only that the Commission could not order refunds under Section 204 unless it had issued a suspension order. The court had no occasion to address the effect of Section 204(a)(2)(A). *See* Comments of SBC Communications Inc. in Support of Verizon's Petition for Reconsideration at 5 n.10 (filed April 7, 2003).

[10] *See, e.g., Telecommunications Research and Action Center* v. *FCC*, 750 F.2d 70, 75-79 (D.C. Cir. 1984); *MCI Telecommunications Corp.* v. *FCC*, 627 F.2d 322, 340 (D.C. Cir. 1980); *see also* 134 Cong. Rec. H10,454 (daily ed. Oct. 19, 1988) (statement of Sen. Inouye) ("We expect that the FCC will comply with the time deadlines [in § 204] . . . and that the Court of Appeals for the D.C. Circuit will grant petitions for mandamus in short order should the FCC fail to comply").

that traffic sensitive access charges in *current* years should be set at certain levels does not mean that Verizon can suddenly keep amounts that it unlawfully overcharged IXCs in *previous* years. Verizon also claims (at 12-13) that AT&T would be required to pass through any refunds to AT&T's own customers from that period, and, for that reason, the Commission should not bother to reach the plainly correct result in this proceeding. Even if true, that would hardly justify allowing Verizon to keep the windfalls it reaped by using OPEB costs improperly to raise its price caps. In any event, AT&T's prices, unlike the LECs' prices, were at all relevant times well below its price caps, and Verizon's "passthrough" argument is, accordingly, wrong as a matter of fact as well (and other long distance carriers that paid the LECs' OPEB-inflated access charges were, of course, not subject to any price cap regulation at the time).

III. SBC CONTINUES TO IGNORE THE EFFECT OF THE OPEB RATE BASE ADJUSTMENT ON THE DEVELOPMENT OF THE EUCL AND HAS FAILED TO EXPLAIN THE AMERITECH OVERSTATEMENT OF OPEB COSTS.

The LECs have sought selectively to recalculate only the rate base impact that works in their favor while completely ignoring the other offsetting impacts of the rate base increase (*e.g.*, on the BFP revenue requirement that forms the basis for CCL rates). AT&T at 35-37. SBC does not deny that the OPEB rate base change affects the BFP revenue requirement, even though overall common line recovery may be constrained by the basket's PCI.[11] An increased rate base due to the reversal of Account 4310 treatment would have allowed the carrier to project a correspondingly higher prospective rate base to be used in the development of the BFP revenue

[11] SBC at 13.

requirement and, in turn, the EUCL charge. The higher EUCL revenues would have resulted in lower CCL rates.[12]

SBC also misses the point when it argues that there is no mechanism for a EUCL true-up and that "even if the BFP were adjusted to account for the RAO 20 reversal, the overall common line allowable recovery would remain virtually unchanged."[13] As AT&T explained (at 37 n. 84), although the total common line revenue requirement would be recovered so that the LEC is not at risk, the change in the BFP would change the portion that was recovered through SLC charges and the portion that was recovered through CCL charges. A lower EUCL would allow the LEC to set a higher CCL and would result in interexchange carriers paying more than their share of common line charges. SWBT's filing, attached to SBC's Comments, expressly recognizes this effect:

> The effect on SWBT of such a "true up" on EUCL and CCL rates, in any event, would not result in any net change in overall interstate revenues. Excluding the OPEB rate base reduction for Account 4310 in prior years' below-cap EUCL rate calculations (1993 and 1994) would simply have redistributed the Common Line revenue recovery between EUCL charges and CCL charges. Little or no difference in the total allowed Common Line revenue amount would result. [14]

It is clear from Pacific Bell's filing, attached as Exhibit 3 to SBC's Comments, that Pacific Bell in fact deducted Account 4310 amounts from its rate base in developing the BFP revenue requirement and the EUCL. Response of Pacific Bell, May 13, 1996. By contrast, it included Account 4310 OPEB amounts in its rate base for purposes of calculating sharing

[12] Pacific Bell has confirmed that the OPEB adjustment has a direct effect on the BFP revenue requirement: "Reducing our 1996-97 rate base by the OPEB amounts in Account 4310 reduces our 1996-97 BFP revenue requirement by $19.87 M." Response of Pacific Bell to Petitions to Reject, May 13, 1996, at 11-12, n. 21.

[13] SBC at 13.

[14] SWBT Reply Comments, May 13, 1996, at 7.

obligations. This inconsistent treatment of zero-cost OPEB amounts, always to the advantage of the LEC, is patently unreasonable.

SBC also fails to provide the necessary cost support to explain the overstatement of OPEB costs contained in its original filing. In Appendix A of its Comments,[15] AT&T demonstrated, by comparing the Direct Case filing of Ameritech in August, 1995, with its 1996 tariff filing, that Ameritech had overstated its OPEB costs by $36.5 million.[16] SBC attempts to counter this analysis, not by providing the necessary factual support for its OPEB adjustment amounts for the relevant years, but by constructing an example which makes certain arbitrary assumptions as to the balances in the OPEB account and then adds a new "interstate curtailment cost" figure (which has never been mentioned before). To be sure, AT&T's analysis in Appendix A was intended as an illustration of the inconsistencies in Ameritech's reported amounts and was necessitated by the fact that Ameritech provided no cost support for its OPEB adjustments. SBC has chosen to respond to AT&T's analysis by changing the illustration – changing assumptions, increasing the time period, and adding heretofore unknown "curtailment costs" – rather than simply providing the actual underlying data. Furthermore, as detailed in Attachment 1, both the assumptions and the steps of SBC's counter-analysis are seriously flawed and result in figures that contradict amounts previously reported by Ameritech. SBC's attempt

[15] A similar analysis was presented in Appendix B-3 of AT&T's Petition, April 29, 1996.

[16] AT&T's analysis used the average 1992 rate base, as shown in Ameritech's Exhibit 13 in its 1996 annual price cap filing, as the starting point for the average 1993 rate base. AT&T has no knowledge whether the 1992 OPEB rate base adjustment reflects the Account 4310 or Account 1410 OPEB amounts that Ameritech actually removed or added to its rate base prior to the 1996 filing.

to refute AT&T's analysis thus fails because it rests on unjustified assumptions and unreliable or hypothetical amounts.

CONCLUSION

For the foregoing reasons and those in AT&T's Comments, the Commission should reject the LECs' unlawful tariffs and order the LECs to refund ratepayers for the massive overcharges.

Respectfully Submitted,

/s/ Judy Sello

David L. Lawson
James P. Young
Joy M. Leong
Christopher T. Shenk
Sidley Austin Brown & Wood L.L.P.
1501 K St. N.W.
Washington, D.C. 20005
(202) 736-8000

Mark C. Rosenblum
Lawrence J. Lafaro
Judy Sello
AT&T Corp.
Room 3A229
One AT&T Way
Bedminster, NJ 07921
(908) 532-1846

Attorneys for AT&T Corp.

April 22, 2003

ATTACHMENT 1

In response to AT&T's Appendix A, concerning Ameritech's $36.5 million overstatement of OPEB costs, SBC has submitted a counter-analysis at pages 10-11 of its Comments. This analysis contains several serious flaws:

First, SBC assumes that the level of activity in the OPEB liability account was the same in 1991, 1992, and 1993, and that OPEB account activity was increasing at a constant rate. These assumptions are counter-intuitive because one would expect that there would be some procedure that would allow transfers out of the account as payments are made. A constant rate of growth in the account would imply that there is no mechanism for "relieving" the account. In addition, amortization of the TBO, as required by the Commission, would reduce both the current year's and prior year's balances in Account 4310. However, this effect is not accounted for in SBC's assumptions. SBC further appears to assume – without explanation – that the additional OPEB rate base impact occurs at the beginning of each year in order to end up with a $29.4 million average balance. If, instead, the impact occurred at the end of the year, the average rate base impact would only be a $29.4/12 = $2.45 million change. SBC's assumptions are totally arbitrary.

Second, SBC's assumption that the 1991, 1992, and 1993 "incremental OPEB costs" are $29.4 million for each year results in a 1992 average that contradicts its own reported 1992 average. Based on SBC's assumptions in its Comments, the 1992 average would be calculated from the sum of the 1991 and 1992 accumulated OPEB amounts. The specific calculation would be computed as follows: ($29.4 million (the balance as of 12-31-91) + $58.8 million (the

balance as of 12-31-92))/ 2 = $88.2/2 = $44.1 million. This $44.1 million contrasts sharply with the "actual" average of $31.481 million reported in Ameritech's 1996 work papers. Ameritech Transmittal No. 961, 1996 Annual Price Cap Filing, Exhibit 13 at page 2 of 4.

Third, even after adopting these favorable – and unjustified – assumptions, SBC must introduce another $24.0 million in order to reach its "average 1993 OPEB liability balance of $85.5 million" (on line 8). SBC presents the $24.0 million as "1993 interstate curtailment cost," explaining tersely: "A 1993 force reduction plan resulted in additional FAS 106 curtailment costs." Comments of SBC Communications, April 8, 2003, at 11 n. 24. AT&T is unaware of any mention of these costs in earlier filings of Ameritech. If indeed these one-time costs are associated with a company downsizing, one would expect that at least some of these one-time expenses would have been paid in the year they were incurred, thus reducing the "curtailment" effect.

In sum, SBC has failed to explain Ameritech's overstatement of its OPEB rate base adjustment. It has resorted to conjecture, unjustified assumptions, and a hypothetical illustration to confuse the issue and cloud the fact that it refuses to supply the necessary factual support for its own figures.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of April, 2003, I caused true and correct copies of the forgoing Reply Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: April 22, 2003
Washington, D.C.

/s/ Peter M. Andros

Peter M. Andros

SERVICE LIST

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554*

Nese Guendelsberger
Pricing Policy Division
Wireline Competition Bureau
445 12th Street, SW, Room 5A-333
Washington, D.C. 20554

Qualex International
Portals II
445 12th Street, SW
Washington, D.C. 20554

Joseph DiBella
Verizon
1515 North Courthouse Road, Suite 500
Arlington, VA 22201

Alan Buzacott
WorldCom, Inc.
1133 19th Street, NW
Washington, D.C. 20036

Davida M. Grant
Gary L. Phillips
Paul K. Mancini
SBC Communications, Inc.
1401 Eye Street, NW, Suite 400
Washington, D.C. 20005

* Filed electronically